

MAY 10 2017

Personal Privacy

Oakland, CA 94618

Personal Privacy

May 8, 2017

Scott Pruitt, EPA Administrator ("EPA")  
1200 Pennsylvania Ave., NW, Mail Code 1101A  
Washington, DC 20460

Enforcing Agency

Chair Henry Abarbanel  
San Diego Regional Water Quality Control Board ("RWQCB")  
2375 Northside Drive, Suite 100  
San Diego, CA 92108-2700  
Also attn: David Becker; Laurie Walsh

Enforcing Agency

Mayor Toni Iseman and City Manager John Pietig  
City Council, City of Laguna Beach ("City")  
505 Forest Ave.  
Laguna Beach, CA 92651

Violator (accepts pollution)

Director Malcolm Dougherty  
California Department of Transportation ("CalTrans")  
1120 N Street, MS 49  
Sacramento, CA 95814

Violator (accepts pollution)

Directors Gary Rubel and Alan Anderson  
Three Arch Bay Community Services District ("TABCS")  
5 Bay Drive  
Laguna Beach, CA 92651

Violator (VL sedim. basin)

President Stephen Miller and Agent for Service Nikki Rognifard  
Three Arch Bay Association ("TAB")  
5 Bay Drive  
Laguna Beach, CA 92651

Violator (VdS sedim. basin)

Personal Privacy

Personal Privacy

Laguna Beach, CA 92651

Violator (VW sediment basin)

Personal Privacy and Personal Privacy

Personal Privacy

Laguna Beach, CA 92651

Violator (VW sediment basin)

Chair Dayna Bochco  
Cal. Coastal Commission ("CCC")  
45 Fremont St #1900  
San Francisco, CA 94105

Interested Entity

Chair Felicia Marcus  
State Water Resources Control Board ("SWRCB")  
1001 I Street, 24th Floor  
Sacramento, CA 95814

Interested Entity

Chair Derek McGregor  
Orange County LAFCO ("LAFCO")  
12 Civic Center Plaza, Room 235  
Santa Ana, CA 92707

Interested Entity

Acting Regional Administrator Alexis Strauss  
US EPA Pacific Southwest, Region 9  
75 Hawthorne St.  
San Francisco, CA 94105

EPA Regional Office

Re: **60 DAY NOTICE OF VIOLATIONS OF THE CLEAN WATER ACT AND  
NOTICE OF INTENT TO FILE SUIT** [Clean Water Act (see 33 U.S.C. Sec. 1365)]  
Ongoing mud, silt, debris and other pollutants discharged from point source(s) over the  
last five years during storm and/or non-storm events into the Pacific Ocean either directly  
and/or indirectly after being passively accepted by NPDES/MS4 permit holder(s)  
[This is being sent by certified mail to all the addressees noted above]

Dear EPA Administrator, agencies, violators and others:

I am the person giving notice with my address and other information noted above; and I make the following statements pursuant to 40 C.F.R. Sec. 135 and the Clean Water Act ("CWA").

I own property on **Personal Privacy**, and enjoy recreational and other activities in or near the Pacific Ocean, that are being adversely affected by pollutant discharges noted herein. The nearest public beach to me is 1000 Steps Beach; it is only a few blocks away. I also can move up and down the coast from 1000 Steps Beach on a surf mat that I designed and have made for me. The areas that I can access and enjoy also include rocks, sand and waters seaward of the mean high tide line abutting the Three Arch Bay subdivision on the south all the way to Table Rock beach to the north.

Over the last five years, there were and continue to be ongoing mud, silt, debris and other pollutants being discharged into the waters of the United States via three drainage paths due to the initial acts of Three Arch Bay Association ("TABA") and/or Three Arch Bay Community Services District ("TABCS D"), and the subsequent acts as to the Virginia Way drainage path by **Personal Privacy** **Personal Privacy** **Personal Privacy** and/or **Personal Privacy**. All the violators are "persons" as defined under the CWA. None of them have a NPDES permit and/or MS4 permit except for the City and possibly CalTrans.

These polluted discharges come downhill onto the property(ies) of homeowners (e.g. onto [Personal Privacy] property for the Virginia Way drainage path; onto [Personal Privacy] property for the Stonington Way drainage path), onto a highway controlled by CalTrans, and then into the City's storm water system; and/or go directly into the ocean (e.g. at Vista del Sol in the Three Arch Bay subdivision).

The Three Arch Bay subdivision consists of about 29 acres; it includes undeveloped land and many homes in a gated community with restricted access. It is some times called Three Arches Bay. TABCSD is a community services district ("CSD") formed under Cal. Gov.Code Secs. 61000 et seq. According to reports filed with the Orange County Auditor-Controller, TABCSD "maintains the storm drain system and furnishes security services to the residents" of Three Arch Bay.

TABA is a domestic non-profit organization incorporated in Calif. with Corporate No. C0167060. TABA acts as homeowners association for the residents of Three Arch Bay.

The polluted discharges collected and directed by TABA and/or TABCSD that go into the ocean occur during storm events, on the day(s) after a storm event(s), and/or during non-storm event days.

The polluted discharges collected in and then redirected by the sediment basin on Virginia Way ("VW") as owned, operated and/or controlled [Personal Privacy] and [Personal Privacy] (e.g. by removing a drain cover; by maintaining the artificially-elevated western edge of the basin) that go into the ocean occur during storm days, on the day(s) after a storm event day(s), and/or during non-storm event days.

The polluted discharges from the drainage paths of Virginia Way and/or Stonington Way that are passively accepted by Caltrans on South Coast Highway ("SCH"), then passively accepted by the City in its storm water drainage system at 7<sup>th</sup> St., and then go into the ocean occur during storm event days, on the day(s) after a storm event day(s), and/or during non-storm event days.

The polluted discharges occur every time the Orange County Laguna Beach No. 100 rain gauge indicates that one half inch (0.5 inch) or more of rain has fallen per day, and usually when there is more than 0.3 inch of rain after the ground has been saturated from rain on the day(s) before.

The polluted discharges in the Virginia Way drainage path are easily observed during the day. The discharges sometimes occur at night, so those events are not easily recorded or observed. The storm water coming down the Virginia Way drainage path is first polluted by acts of TABCSD and/or TABA (e.g. due to lack of proper erosion control), and then the polluted storm water is collected and redirected by acts of and related to the sediment basin owned, operated and/or controlled by homeowners [Personal Privacy] and [Personal Privacy] and/or [Personal Privacy] all of whom abut Virginia Way on the west side, and all of whom own, operate and/or control of the operation of that large, shallow sediment basin on Virginia Way (e.g. see Cal. Civil Code Secs. 831, 845, 1714 and 3483). Many times, I have observed the mud and sediment during rains and/or remaining on Virginia Way and/or on my property after the rain(s) have occurred.

The polluted discharges in the Stonington Way drainage path go by [Personal Privacy]'s house on the south side which is believed to be frequently unoccupied. Once past that house, the polluted discharges can be easily observed during the day when the drainage gets to the South Coast Highway ("SCH",



aka Pacific Coast Highway or PCH). Many times, I have observed the mud and sediment during rains and/or that remain on the SCH just west of that house after rain(s) have occurred.

The polluted discharges in the Vista del Sol drainage path might be easily observed but it is part of the Three Arch Bay subdivision, so only those living in that gated community can usually observe it. Because the Three Arch Bay subdivision was created before the Calif. Coastal Act, it is a "white hole" which means that public access to the beach is not allowed (e.g. so the public cannot observe how much mud and sediment is in the storm water being discharged into the ocean).

The polluted discharges from the Virginia Way drainage path come out onto SCH near the northwest corner of [Personal Privacy] property; **and** the polluted discharges from the Stonington Way drainage path come out onto SCH near [Personal Privacy] house. Both of these polluted discharge waters then flow north in the gutter on the east side of SCH which is owned, operated and/or controlled by Caltrans; go into the City's municipal storm water system on the east side of SCH near the hospital at 7<sup>th</sup> St.; go west through a pipe under SCH; go into the City's large "water tower" energy diffuser or dissipater on the beach; and then go into the ocean.

Since about 2002 or earlier, CalTrans has known about the discharges of pollutants (e.g. from a state court lawsuit filed by TABCSD in Orange County Superior Court Case No. 01CC15035, in which CalTrans was named as a defendant and/or cross-defendant), but CalTrans has done nothing to stop the polluted discharges. It is unknown if CalTrans has a NPDES or similar permit.

Since about 2001 or earlier, City has known about the discharges of pollutants (e.g. from a state court lawsuit filed by TABCSD in Orange County Superior Court Case No. 01CC15035 in which City was named as a defendant by TABCSD), but City has done nothing to stop the polluted discharges. It is believed that City has a NPDES permit and/or MS4 permit.

The polluted discharges from the Vista del Sol drainage path go into the Pacific Ocean near where that road terminates in Three Arch Bay on the west end by La Senda. The polluted storm water occurs within the Three Arch Bay subdivision until that is discharged into the ocean.

It is believed that the SWRCB can issue certain permits to a "person" under the CWA but for activities occurring outside of a city with a NPDES permit and MS4 permit, such as the City of Laguna Beach. Here, it is believed that SWRCB issued permits when asked to do so by TABA and/or TABCSD even though TABA and TABCSD were entirely within the boundaries of the City of Laguna Beach from 1987 onward, and as a result, they should have asked the RWQCB for a permit to built sediment basins rather than asking the SWRCB.

The history: From at least 1992 to the present, there has been uncontrolled erosion from the steep hillsides controlled by TABCSD and/or TABA into the Virginia Way drainage path. The Virginia Way drainage path has historically drained at least 8.5 acres. That erosion has resulted in mud, debris and silt being sent into the Pacific Ocean at one of the most famous beaches in Laguna Beach, 1000 Steps Beach. Before getting to my property, the eroded materials go into a sediment basin above Vista Linda ("VL"), into a large pipe, into an energy diffuser or dissipater, and into an old concrete block collection area just behind my property, all of which are owned, operated and/or

controlled by TABCSD and/or TABA. Next, on the way to the ocean, those eroded materials go across my property located at **Personal Privacy**. Those eroded materials get collected and redirected by a shallow sediment basin on Virginia Way ("VW"), go onto SCH, go into the City's municipal storm system, and then go into the ocean. In addition, from my observations, there was a lack of erosion controls installed uphill from those sediment basin(s).

Up to about 2010, some of the storm water that should have gone into the Stonington Way drainage path was sent to the Virginia Way drainage path. The Stonington Way drainage path has historically drained at least 3.7 acres. In addition, from my observations, there was a lack of erosion controls installed in the Stonington Way drainage path.

As a result of an adverse decision in Case 01CC15035 against TABCSD on June 23, 2008, TABCSD and/or TABA changed the flow of storm water in 2009 and/or 2010 so that Stonington Way received the storm water runoff for the surface area that historically drained into the Stonington Way drainage path. However, as part of those same changes in 2009 and/or 2010, new storm water that had historically drained into the Vista del Sol drainage path was added to the Virginia Way drainage path above the sediment basin near Vista Linda, resulting in more erosion products in the storm water runoff going into the Virginia Way drainage path.

As for the Vista del Sol drainage path, similar sediment basin(s) were constructed by TABCSD and/or TABA which allowed eroded materials to go into the ocean. The Vista del Sol drainage path has historically drained at least 36 acres. In addition, from my observations, there was a lack of erosion controls installed uphill from the Vista del Sol ("VdS") sediment basin(s).

As noted herein, the pollutions from erosion is caused by several methods and, at the same time, the eroded materials reach the ocean due to several different methods and reasons.

One pollutant source is the goats. During the summer, TABCSD and/or TABA uses goats for fire control. The hooves of the goats break the soil cap on the steep slopes of the easily-eroded hillsides. The goats are allowed to stay on the land too long, the land is overgrazed, and there are not enough BMP, BCT, BPT and/or BAT control methods under the CWA in place to stabilize the loosened soil (which then quickly erodes during rains).

One pollutant source is construction. At various times, TABCSD, TABA and/or individual homeowners in Three Arch Bay engage in construction projects on the steep hillsides without creating a proper SWPPP and/or using enough proper erosion control methods (e.g. via BMP, BCT, BPT and/or BAT). It appears the proper permits were not obtained from the City and/or RWQCB in 2009 and 2010, but instead some permits were obtained from SWRCB. No one is properly monitoring these construction projects for "inadvertent" discharges, and there are not enough BMP, BCT, BPT and/or BAT control methods being used in the Three Arch Bay subdivision. As a result, non-storm pollutants such as concrete washout water also routinely come down the hill in the Virginia Way drainage path, and probably come down in the other drainage paths too.

For example, major storm water construction project(s) in the drainage area(s) started in about 2009 and were completed in about 2010 without a SWPPP approved by RWQCB and/or without permits



issued by the City. TABA's storm water construction project for Vista Del Sol and La Senda in 2010 had a SWPPP reviewed by the SWRCB (see WDID No. 9 30C358651 submitted 6/30/10). However, the two construction projects were split apart, so one project was below the SWPPP's acreage limitation (which assumes they were not part of this 29 acre planned development).

Once both projects were completed in 2010, the Vista del Sol drainage area sent extra storm water via a hidden pipe into the Virginia Way drainage area, causing heavy soil erosion which promptly filled new "sediment basin" in the Virginia Way drainage path (aka a large concrete funnel just above Vista Linda) during a Nov. 2010 rain. One month later, the Dec. 2010 rains did the same thing to that new sediment basin above Vista Linda and also filled the Virginia Way sediment basin (as operated by [Personal Privacy] and [Personal Privacy] with mud and sediment. It is believed that this still occurs.

One pollutant source is the lack of enough BMP, BCT, BPT and/or BAT control methods under the CWA for erosion control on the steepest parts of the hillsides. In other words, there are not enough straw wattles, sandbag dams, or sediment separators (active or passive) on the steep parts of the Three Arch Bay subdivision. Because of that, when fire hydrants, hot tubs, or swimming pools are flushed, that "clean" water picks up eroded materials on the streets, hills and/or in the pipes, and discharges those pollutants into the ocean (e.g. usually on non-storm days).

As noted in the EPA's Jan. 27, 2015 letter to me, RWQCB has known about this since June 2013, but has not stopped these pollution discharges. The City of Laguna Beach claimed in its Oct. 22, 2013 letter that TABCSD's facilities were "not covered" by the City's NPDES/MS4 permit.

However, the RWQCB's May 18, 2015 letter indicates City must do something to stop TABCSD's polluted discharges (i.e. the City "cannot passively receive illicit discharges by third parties into the City's MS4") or the City "essentially accepts responsibility for discharges into the MS4 that it does not prohibit or otherwise control". The same should apply to CalTrans when it passively accepts polluted discharges onto its highway SCH (e.g. assuming it has a NPDES or similar permit).

Caltrans and the City have known about this pollution for over a decade because of TABCSD's 2001 state court lawsuit Orange County Superior Court Case No. 01CC15035 (in which the City, CalTrans, [Personal Privacy] [Personal Privacy] and me were named as defendants and/or cross-defendants).

The polluted discharges from the Virginia Way and Stonington Way drainage paths goes north to a drain at 7th Street (because of Caltrans changed the slope of that highway from the south to the north), through the City's pipes to the City's "water tower" on the beach, and into the ocean.

Given the \$37,500 in civil penalties available per day per violator under the CWA, during the last 5 years it appears that somewhere between \$5 and \$10 million in civil penalties in total can be collected from the violators (e.g. TABCD, TABA, [Personal Privacy] [Personal Privacy], City of Laguna Beach and/or CalTrans) and made payable to the US Treasury.

Pollutant standards or limitations: Mud, sediment, sand and other pollutants are not allowed in storm water runoff, but that is occurring here. The use of BMP, BCT, BPT and/or BAT control methods under the CWA are mandated to reduce mud, sediment, sand and other pollutants, but here

those control methods are not being used by the "primary" violator(s) and/or there is simply not enough of those control methods being used and/or installed by the "primary" violator(s).

If a "person" applies for and is issued a NPDES permit, some amounts may be allowed to be discharged into the ocean based on size, amount and/or characteristics (e.g. certain sized sand that replenishes the beaches), and certain control methods may be specified in that permit.

Here, none of the "primary" violators such as TABCSD, TABA, [Personal Privacy] and [Personal Privacy] have a NPDES and/or MS4 permit; and it is believed the "secondary" violators such as City and/or CalTrans are passively accepting pollutants prohibited by their own NPDES or similar permits.

Government agencies that can stop this pollution, but have not so acted to date:

At the federal level, the EPA is the agency with authority to stop these polluted discharges. The CWA indicates the EPA has authority over this. 33 U.S.C. Secs. 1361 et seq.

At the state level, the RWQCB is the agency with authority to stop these polluted discharges. It is possible that the Cal. Coastal Commission ("CCC") and/or CalTrans could help in stopping this pollution but, to date, they have done nothing.

For example, TABCSD requested a permit from the CCC in 2003 (Application 5-03-298, which was submitted after the 2001 case 01CC15035 had been filed by TABCSD) regarding the enlarging "flood control debris basin" on Vista Del Sol, but it seems the CCC was never told about the other changes to the sediment basins noted herein, or was told but ignored them.

As another example, CalTrans has requirements for its own sediment basins (e.g. 3,600 cubic feet of storage for each 1 acre of drainage), but TABCSD's sediment basin above Vista Linda as built in 2010 is believed to be less than 30,000 cubic feet in size for 8.5 acres of drainage.

At the county level, LAFCO could help in stopping this pollution. For example, in 2012, the Orange County Grand Jury questioned why TABCSD was still in existence to which TABCSD provided a "Let There Be Light" response on July 2, 2012 that didn't really address the issues (e.g. which was after filing its 01CC15035 case and after the adverse decision in June 23, 2008 therein; and after the 2009-2010 changes were made to the sediment basins in Three Arch Bay).

At the city level, the City of Laguna Beach (who was/is subject to NPDES Municipal Storm Water Permit Order No. R9-2013-0001) could help in stopping this pollution but, to date, it has done nothing. For example, an Investigative Order was issued to the City on May 18, 2015 by the RWQCB regarding the issues noted herein, but the City did not do a thorough investigation as to TABCSD, TABA or the Three Arch Bay subdivision (even though the City was a defendant as of 2001 in TABCSD's 01CC15035 case). Instead, City blamed the complaining party, and ignored the RWQCB's comments about it passively-accepting polluted storm water.

Related correspondence to date: Each of the addressees should have or can easily get copies of correspondence including at a minimum: City's Oct. 22, 2013 letter to me; EPA's Jan. 27, 2015



letter to me; RWQCB9's May 18, 2015 letter to City of Laguna Beach requesting a technical report; City's July 17, 2015 response to the RWQCB's May 18, 2015 letter with the City's technical report, photos of the "highly erodible" watershed, and some of the June 2009 "plans" for "Vista de Catalina Storm Drain Improvements" (e.g. sediment or debris basin above Vista Linda) with Drew Harper of TABA as a contact person and nothing about a permit from the RWQCB; TABA's SWPPP for 2010 changes to Vista del Sol and La Senda streets with a permit from the SWRCB; and EPA's Sept. 27, 2015 letter to me advising that I might consider filing a citizen's complaint.

Simple and inexpensive solutions exist as to these problems:

The "primary" and "secondary" violators have inexpensive ways to stop the polluted discharges.

For example, TABA and/or TABCSD should modify their sediment basin(s) and uphill areas under their control to stop the mud and sediment from being created (e.g. install enough erosion controls uphill) and to create a place in their sediment basin(s) or above them to collect or settle-out sediment and mud without sending that immediately down the hill (e.g. cover the lower portion of the holes in the vertical pipe in the sediment basin). TABCSD and/or TABA should install enough straw wattles and sand bag dams uphill of their sediment basin(s) to prevent erosion, and establish method(s) to keep those wattles and dams in working order.

Personal Privacy and Personal Privacy should stop collecting polluted runoff and redirecting that polluted runoff to others by modifying the Virginia Way sediment basin under their control by each installing overflow surface drain trenches (e.g. lowering the elevations of the western side of Virginia Way and lowering the eastern side of their land), so that they do not collect and redirect the polluted runoff. See Sierra Club v. Abston Constr. Co., Inc., 620 F.2d 41, 45-46 (5<sup>th</sup> Cir. 1980) and Comm. to Save Mokelumne River v. East Bay Muni. Util. Dist., 13 F.3d 305, 308-309 (9<sup>th</sup> Cir. 1993).

Each "secondary" violator [e.g. City and/or CalTrans] who passively allows pollutants in runoff into their drainage systems should initiate prosecution of "primary" violators causing the polluted discharges. The regulatory agency(ies) [e.g. EPA or RWQCB] should prosecute the violators.

Actions requested:

These violators should stop collecting polluted runoff in sediment basin(s), and/or directing, redirecting, and/or accepting polluted runoff, all of which are being discharged into the ocean.

If the appropriate agency or entity does not take action within the next 60 days, I will file a citizen's lawsuit against the violators and the entities that refuse to do their jobs under the CWA; and I will seek at a minimum civil penalties of \$37,500 per day per "primary" and/or "secondary" violator payable to the US Treasury along with other damages. 33 U.S.C. Secs. 1361 et seq; Natural Resources Defense Council v. Los Angeles, 725 F.3d 1194, 1197-1210 (9<sup>th</sup> Cir. 2013).

Personal Privacy

Owner of the duplex at Personal Privacy 15 Personal Privacy Laguna Beach, CA